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Attorneys for Plaintiff Stephen Song

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEPHEN SONG, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

KLM GROUP, INC. dba KLM ONSITE
SOLUTIONS, a Pennsylvania corporation;
and DOES 1 through 20, inclusive,

Defendants.

Case No.: 3:10-CV-03583-SC

JOINT STIPULATION TO FILE FIRST
AMENDED COMPLAINT

The parties, by and through their counsel of record, hereby stipulate and agree as follows:

WHEREAS, on or about June 29, 2010, Plaintiff STEPHEN SONG (“Plaintiff”) filed a
class action complaint against Defendant KLM GROUP, INC., dba KLM ONSITE SOLUTIONS
(“Defendant”) in the Superior Court of California, County of Alameda;

1 WHEREAS, on or about August 13, 2010, Defendant filed an Answer to Plaintiff's
2 Complaint ("Answer") in the Superior Court of California, County of Alameda;

3 WHEREAS, on or about August 13, 2010, Defendants removed the instant action to the
4 United States District Court, Northern District;

5 WHEREAS the parties, through their counsel of record, have met and conferred
6 regarding filing of a First Amended Complaint;

7 WHEREAS a copy of Plaintiff's First Amended Complaint is attached hereto as Exhibit
8 "A";

9 IT IS HEREBY STIPULATED by the parties herein, through their counsel of record, as
10 follows:

11 1. Upon entry of this Stipulation, Plaintiff shall be allowed to file said First
12 Amended Complaint.

13 2. Upon the filing of the First Amended Complaint, Defendant's Answer to
14 Plaintiff's original Complaint shall be deemed as Defendant's answer to Plaintiff's First
15 Amended Complaint.

16 SO STIPULATED.

17
18 Dated: August 26, 2010

DIVERSITY LAW GROUP

19
20 By: /s/
21 Larry W. Lee, Esq.
22 Attorneys for Plaintiff

23 Dated: August 26, 2010

FARELLA BRAUN & MARTEL, LLP

24
25 By: /s/
26 Douglas Dexter
27 Attorneys for Defendants
28



1 I, Larry W. Lee, attest that I have obtained concurrence from Douglas Dexter in the filing
2 of this Stipulation. See N.D. Cal. General Order 45 § 10(B).

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and DOES 1 through 20, inclusive,

Defendants.

Case No.: 3:10-CV-03583-SC

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

- (1) FAILURE TO PAY MINIMUM
WAGES IN VIOLATION OF LABOR
CODE § 1197;**
- (2) FAILURE TO PAY MINIMUM
WAGES IN VIOLATION OF FAIR
LABOR STANDARDS ACT, 29 U.S.C.
§ 206;**
- (3) FAILURE TO PAY OVERTIME
WAGES IN VIOLATION OF LABOR
CODE §§ 510 & 1194;**
- (4) FAILURE TO PAY OVERTIME
WAGES IN VIOLATION OF FAIR
LABOR STANDARDS ACT, 29 U.S.C.**

§ 207;

(5) VIOLATION OF LABOR CODE § 226.7;

(6) VIOLATION OF LABOR CODE § 226;

(7) VIOLATION OF LABOR CODE § 2698 *ET SEQ*;

(8) UNFAIR BUSINESS PRACTICES
(Violation of California Business & Professions Code §17200 et seq.).

DEMAND FOR JURY TRIAL

Plaintiff Stephen Song (hereinafter referred to as “Plaintiff”), hereby submits this First Amended Class Action Complaint against Defendant KLM Group, Inc. dba KLM Onsite Solutions and Does 1-20 (hereinafter collectively referred to as “DEFENDANTS”) on behalf of themselves and the class of all other similarly situated current and former employees and common law employees of DEFENDANTS, as follows:

INTRODUCTION

1. This class action is within the Court’s jurisdiction under California Labor Code §§ 201-204, 226, 226.7, 510, 1194, 1197, 2698, California Business and Professions Code § 17200, et seq., (Unfair Practices Act), and the Fair Labor Standards Act 29 U.S.C. §§ 206 & 207 (“FLSA”).

2. This complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code, Business and Professions Code and the FLSA against employees of DEFENDANTS.

3. Plaintiff is informed and believes and based thereon alleges DEFENDANTS, joint and severally have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees in paying all benefits owed to them, failure to pay final wages pursuant to the Labor Code, and failure to keep proper records in violation of the Labor Code.

4. Plaintiff is informed and believes and based thereon alleges DEFENDANTS have engaged in, among other things a system of willful violations of the California Labor Code,

1 Business and Professions Code, applicable IWC wage orders, and the FLSA by creating and
 2 maintaining policies, practices and customs that knowingly deny employees the above stated
 3 rights and benefits.

4 **5.** The policies, practices and customs of defendants described above and below have
 5 resulted in unjust enrichment of DEFENDANTS and an unfair business advantage over
 6 businesses that routinely adhere to the strictures of the California Labor Code, Business and
 7 Professions Code, and the FLSA.

8 **JURISDICTION AND VENUE**

9 **6.** The Court has jurisdiction over the violations of the California Labor Code §§ 201-
 10 204, 226, 226.7, 510, 1194, 1197, 2698, California Business and Professions Code § 17200, et
 11 seq., (Unfair Practices Act), and the FLSA.

12 **7.** Venue is proper because the DEFENDANTS do business in the State of California,
 13 they did not list a principle place of business in California with the California Secretary of State,
 14 and their principle place of business is in Pennsylvania.

15 **PARTIES**

16 **8.** Plaintiff STEPHEN SONG was employed by DEFENDANTS until on or about May
 17 24, 2010. Plaintiff was a victim of the policies, practices and customs of DEFENDANTS
 18 complained of in this action in ways that have deprived him of the rights guaranteed to him by
 19 California Labor Code §§ 201-204, 226, 226.7, 510, 1194, 1197, 2698, and California Business
 20 and Professions Code §17200, et seq., (Unfair Practices Act), and the FLSA.

21 **9.** Plaintiff is informed and believes and based thereon alleges Defendants were and are
 22 corporations doing business in the State of California with its principal place of business located
 23 in Pennsylvania that operate a marketing business.

24 **10.** Plaintiff is informed and believes and based thereon alleges that at all times herein
 25 mentioned DEFENDANTS and DOES 1 through 20, are and were corporations, business
 26 entities, individuals, and partnerships, licensed to do business and actually doing business in the
 27 State of California.

28 **11.** As such, and based upon all the facts and circumstances incident to DEFENDANTS'

1 business in California, DEFENDANTS are subject to California Labor Code §§ 201-204, 226,
2 226.7, 510, 1194, 1197, 2698, and California Business and Professions Code §17200, et seq.,
3 (Unfair Practices Act), and the FLSA.

4 **12.** Plaintiff does not know the true names or capacities, whether individual, partner
5 or corporate, of the DEFENDANTS sued herein as DOES 1 through 20, inclusive, and for that
6 reason, said DEFENDANTS are sued under such fictitious names, and Plaintiff prays leave to
7 amend this complaint when the true names and capacities are known. Plaintiff is informed and
8 believe and based thereon alleges that each of said fictitious DEFENDANTS were responsible in
9 some way for the matters alleged herein and proximately caused Plaintiff and members of the
10 general public and class to be subject to the illegal employment practices, wrongs and injuries
11 complained of herein.

12 **13.** At all times herein mentioned, each of said DEFENDANTS participated in the
13 doing of the acts hereinafter alleged to have been done by the named DEFENDANTS; and
14 furthermore, the DEFENDANTS, and each of them, were the agents, servants and employees of
15 each of the other DEFENDANTS, as well as the agents of all DEFENDANTS, and at all times
16 herein mentioned, were acting within the course and scope of said agency and employment.

17 **14.** Plaintiff is informed and believe and based thereon alleges that at all times
18 material hereto, each of the DEFENDANTS named herein was the agent, employee, alter ego
19 and/or joint venturer of, or working in concert with each of the other co-DEFENDANTS and was
20 acting within the course and scope of such agency, employment, joint venture, or concerted
21 activity. To the extent said acts, conduct, and omissions were perpetrated by certain
22 DEFENDANTS, each of the remaining DEFENDANTS confirmed and ratified said acts,
23 conduct, and omissions of the acting DEFENDANTS.

24 **15.** At all times herein mentioned, DEFENDANTS, and each of them, were members
25 of, and engaged in, a joint venture, partnership and common enterprise, and acting within the
26 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

27 **16.** At all times herein mentioned, the acts and omissions of various DEFENDANTS,
28 and each of them, concurred and contributed to the various acts and omissions of each and all of

the other DEFENDANTS in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, DEFENDANTS, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the DEFENDANTS, and each of them, aided and abetted the acts and omissions of each and all of the other DEFENDANTS in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

17. Definition: The named individual Plaintiff brings this action on behalf of himself and the class pursuant to California Code of Civil Procedure § 382. The **Class** consists of the following: (1) All individuals who worked for DEFENDANTS in the State of California performing marketing and sales services from June 29, 2006 through the present (hereinafter referred to as the “California Class Members”); and (2) All individuals who worked for DEFENDANTS in the United States of America performing marketing and sales services from June 29, 2007 through the present (hereinafter referred to as the “FLSA Class Members”).

18. Numerosity: The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the class is readily ascertainable by review of DEFENDANTS’ records, including payroll records. Plaintiff is informed and believes and based thereon alleges that DEFENDANTS (a) failed to pay to Plaintiff and the class all wages, including minimum and overtime wages, earned, (b) failed to provide proper meal breaks pursuant to California law, (c) failed to keep proper records in violation of Labor Code § 226, and (d) engaged in Unfair Business Practices.

19. Adequacy of Representation: The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the class and individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California and Federal courts.

20. DEFENDANTS uniformly administered a corporate policy, practice of misclassifying Plaintiff and California and FLSA Class Members as “independent contractors”

1 and (a) not paying Plaintiff and the Class all wages, including minimum and overtime wages,
 2 earned, (b) failing to provide proper meal breaks pursuant to California law, (c) failing to keep
 3 proper records in violation of Labor Code § 226, and (d) engaging in Unfair Business Practices.

4 **21.** Plaintiff is informed and believes and based thereon alleges this corporate conduct
 5 is accomplished with the advance knowledge and designed intent to willfully and intentionally
 6 fail to accurately record proper rates of pay, hours worked, net wages, and deductions.

7 **22.** Plaintiff is informed and believes and based thereon alleges DEFENDANTS had
 8 a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor
 9 Code §§ 201-204, 226, 226.7, 510, 1194, 1197, 2698, and the FLSA. Plaintiff and other
 10 members of the Class did not secret or absent themselves from DEFENDANTS, nor refuse to
 11 accept the earned and unpaid wages from DEFENDANTS. Accordingly, DEFENDANTS are
 12 liable for waiting time compensation for the unpaid wages to separated California employees
 13 pursuant to California Labor Code § 203.

14 **23. Common Question of Law and Fact:** There are predominant common questions
 15 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
 16 concerning DEFENDANTS' (a) not paying Plaintiff and the Class all wages, including minimum
 17 and overtime wages, earned, (b) failing to provide proper meal breaks pursuant to California law,
 18 (c) failing to keep proper records in violation of Labor Code § 226, and (d) engaging in Unfair
 19 Business Practices.

20 **24. Typicality:** The claims of Plaintiff are typical of the claims of all members of the
 21 class. Plaintiff is a members of the Class and has suffered the alleged violations of California
 22 Labor Code §§ 201-204, 226, 226.7, 510, 1194, 1197, 2698, and the FLSA.

23 **25.** The California Labor Code and the FLSA upon which Plaintiff bases her claims
 24 are broadly remedial in nature. These laws and labor standards serve an important public interest
 25 in establishing minimum working conditions and standards. These laws and labor standards
 26 protect the average working employee from exploitation by employers who may seek to take
 27 advantage of superior economic and bargaining power in setting onerous terms and conditions of
 28 employment.

1 **26.** The nature of this action and the format of laws available to Plaintiff and
2 members of the Class identified herein make the class action format a particularly efficient and
3 appropriate procedure to redress the wrongs alleged herein. If each employee and common law
4 employee were required to file an individual lawsuit, the corporate DEFENDANTS would
5 necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm
6 the limited resources of each individual plaintiff with their vastly superior financial and legal
7 resources. Requiring each class member to pursue an individual remedy would also discourage
8 the assertion of lawful claims by employees who would be disinclined to file an action against
9 their former and/or current employer for real and justifiable fear of retaliation and permanent
10 damage to their careers at subsequent employment.

11 **27.** The prosecution of separate actions by the individual class members, even if
12 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
13 to individual class members against the DEFENDANTS and which would establish potentially
14 incompatible standards of conduct for the DEFENDANTS, and/or (b) adjudications with respect
15 to individual class members which would, as a practical matter, be dispositive of the interest of
16 the other class members not parties to the adjudications or which would substantially impair or
17 impede the ability of the class members to protect their interests. Further, the claims of the
18 individual members of the class are not sufficiently large to warrant vigorous individual
19 prosecution considering all of the concomitant costs and expenses.

20 **28.** Such a pattern, practice and uniform administration of corporate policy regarding
21 illegal employee compensation described herein is unlawful and creates an entitlement to
22 recovery by the Plaintiff and the Class identified herein, in a civil action, for the unpaid balance
23 of the full amount unpaid wages, including interest thereon, applicable penalties, reasonable
24 attorney's fees, and costs of suit according to the mandate of California Labor Code §§ 218.5,
25 226, 1194, 1197 and Code of Civil Procedure § 1021.5.

26 **29.** Proof of a common business practice or factual pattern, which the named Plaintiff
27 experienced and are representatives of, will establish the right of each of the members of the
28 Plaintiff class to recovery on the causes of action alleged herein.

1 **30.** The Plaintiff Class is commonly entitled to a specific fund with respect to the
 2 compensation illegally and unfairly retained by DEFENDANTS. The Plaintiff Class is
 3 commonly entitled to restitution of those funds being improperly withheld by DEFENDANTS.
 4 This action is brought for the benefit of the entire Class and will result in the creation of a
 5 common fund.

6 **FIRST CAUSE OF ACTION**

7 **(AGAINST ALL DEFENDANTS BY PLAINTIFF FOR FAILURE TO**
 8 **TO PAY MINIMUM WAGES)**

9 **31.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as
 10 though fully set for herein.

11 **32.** This cause of action is brought pursuant to Labor Code § 1197, which provides
 12 that employees are entitled to minimum wages and compensation for work performed.

13 **33.** At all times relevant herein, Defendants were required to compensate Plaintiff and
 14 the Class for all hours worked by said individuals.

15 **34.** As a pattern and practice, Defendants regularly misclassified their employees as
 16 “independent contractors.” Furthermore, Defendants regularly required members of the class to
 17 perform work without the payment of minimum wages. Defendants were aware of such non-
 18 payment of wages.

19 **35.** As a pattern and practice, Defendants regularly failed to pay Class Members
 20 minimum wage compensation for all hours worked.

21 **36.** Plaintiff is informed and believes and based thereon alleges that Defendants’
 22 regular business custom and practice of requiring Class Members to perform work without the
 23 payment of minimum wages, according to the mandates of California law is, and at all times
 24 herein mentioned was, in violation of California Labor Code § 1197, and California Industrial
 25 Welfare Commission wage order(s). Defendants’ employment policies and practices wrongfully
 26 and illegally failed to compensate Class Members for minimum wages earned as required by
 27 California law.

28 **37.** The conduct of Defendants and their agents and employees as described herein

was oppressive, fraudulent and malicious, done in conscious disregard of Class Members' rights, and done by managerial employees of Defendants.

38. Plaintiff is informed and believes and based thereon alleges that Defendants willfully failed to pay Class Members minimum wages for all hours worked. Plaintiff is informed and believes and based thereon alleges that Defendants' willful failure to provide wages due and owing them upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other Class Members who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

39. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of wages owing, including interest thereon, penalties, reasonable attorneys fees, and costs of suit.

SECOND CAUSE OF ACTION

(AGAINST ALL DEFENDANTS BY PLAINTIFF FOR FAILURE TO TO PAY MINIMUM WAGES)

40. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39 as though fully set for herein.

41. This cause of action is brought pursuant to 29 U.S.C. § 206, which provides that employees are entitled to minimum wages and compensation for work performed.

42. At all times relevant herein, Defendants were required to compensate Plaintiff and the Class for all hours worked by said individuals.

43. As a pattern and practice, Defendants regularly misclassified their employees as "independent contractors." Furthermore, Defendants regularly required members of the class to perform work without the payment of minimum wages. Defendants were aware of such non-payment of wages.

44. As a pattern and practice, Defendants regularly failed to pay Class Members minimum wage compensation for all hours worked.

1 **45.** Plaintiff is informed and believes and based thereon alleges that Defendants'
 2 regular business custom and practice of requiring Class Members to perform work without the
 3 payment of minimum wages, according to the mandates of Federal law is, and at all times herein
 4 mentioned was, in violation of 29 U.S.C. § 206. Defendants' employment policies and practices
 5 wrongfully and illegally failed to compensate Class Members for minimum wages earned as
 6 required by Federal law.

7 **46.** The conduct of Defendants and their agents and employees as described herein
 8 was oppressive, fraudulent and malicious, done in conscious disregard of Plaintiff's and class
 9 members' rights, and done by managerial employees of Defendants.

10 **47.** Plaintiff is informed and believes and based thereon alleges that Defendants
 11 willfully failed to pay Class Members minimum wages for all hours worked. Plaintiff is
 12 informed and believes and based thereon alleges that Defendants' willful failure to provide
 13 wages due and owing them upon separation from employment results in a continued payment of
 14 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other
 15 Class Members who have separated from employment are entitled to compensation pursuant to
 16 Labor Code § 203.

17 **48.** Such a pattern, practice and uniform administration of corporate policy regarding
 18 illegal employee compensation as described herein is unlawful and creates an entitlement to
 19 recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of wages owing,
 20 including interest thereon, penalties, reasonable attorneys fees, and costs of suit.

21 **THIRD CAUSE OF ACTION**

22 **(AGAINST ALL DEFENDANTS BY PLAINTIFF FOR FAILURE TO** 23 **TO PAY OVERTIME WAGES)**

24 **49.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 as
 25 though fully set for herein.

26 **50.** This cause of action is brought pursuant to Labor Code §§ 510 & 1194, which
 27 provides that employees are entitled to overtime wages and compensation for all overtime hours
 28 worked.

1 **51.** At all times relevant herein, Defendants were required to compensate Plaintiff and
2 the Class for all overtime hours worked by said individuals.

3 **52.** As a pattern and practice, Defendants regularly misclassified their employees as
4 “independent contractors.” Furthermore, Defendants regularly required members of the class to
5 perform work without the payment of overtime wages. Defendants were aware of such non-
6 payment of wages.

7 **53.** As a pattern and practice, Defendants regularly failed to pay Class Members
8 overtime wage compensation for all overtime hours worked.

9 **54.** Plaintiff is informed and believes and based thereon alleges that Defendants’
10 regular business custom and practice of requiring Class Members to perform overtime work
11 without the payment of overtime wages, according to the mandates of California law is, and at all
12 times herein mentioned was, in violation of California Labor Code §§ 510 & 1194, and
13 California Industrial Welfare Commission wage order(s). Defendants’ employment policies and
14 practices wrongfully and illegally failed to compensate Class Members for overtime wages
15 earned as required by California law.

16 **55.** The conduct of Defendants and their agents and employees as described herein
17 was oppressive, fraudulent and malicious, done in conscious disregard of Class Members’ rights,
18 and done by managerial employees of Defendants.

19 **56.** Plaintiff is informed and believes and based thereon alleges that Defendants
20 willfully failed to pay Class Members overtime wages for all hours worked. Plaintiff is informed
21 and believes and based thereon alleges that Defendants’ willful failure to provide wages due and
22 owing them upon separation from employment results in a continued payment of wages up to
23 thirty (30) days from the time the wages were due. Therefore, Plaintiff and other Class Members
24 who have separated from employment are entitled to compensation pursuant to Labor Code §
25 203.

26 **57.** Such a pattern, practice and uniform administration of corporate policy regarding
27 illegal employee compensation as described herein is unlawful and creates an entitlement to
28 recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of wages owing,

1 including interest thereon, penalties, reasonable attorneys fees, and costs of suit.

2 **FOURTH CAUSE OF ACTION**

3 **(AGAINST ALL DEFENDANTS BY PLAINTIFF FOR FAILURE TO**
4 **TO PAY OVERTIME WAGES)**

5 **58.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 57 as
6 though fully set for herein.

7 **59.** This cause of action is brought pursuant to 29 U.S.C. § 207, which provides that
8 employees are entitled to overtime wages and compensation for overtime work performed.

9 **60.** At all times relevant herein, Defendants were required to compensate Plaintiff and
10 the Class for all overtime hours worked by said individuals.

11 **61.** As a pattern and practice, Defendants regularly misclassified their employees as
12 “independent contractors.” Furthermore, Defendants regularly required members of the class to
13 perform overtime work without the payment of overtime wages. Defendants were aware of such
14 non-payment of wages.

15 **62.** As a pattern and practice, Defendants regularly failed to pay Class Members
16 overtime wage compensation for all hours worked.

17 **63.** Plaintiff is informed and believes and based thereon alleges that Defendants’
18 regular business custom and practice of requiring Class Members to perform work without the
19 payment of overtime wages, according to the mandates of Federal law is, and at all times herein
20 mentioned was, in violation of 29 U.S.C. § 207. Defendants’ employment policies and practices
21 wrongfully and illegally failed to compensate Class Members for overtime wages earned as
22 required by Federal law.

23 **64.** The conduct of Defendants and their agents and employees as described herein
24 was oppressive, fraudulent and malicious, done in conscious disregard of Plaintiff’s and class
25 members’ rights, and done by managerial employees of Defendants.

26 **65.** Plaintiff is informed and believes and based thereon alleges that Defendants
27 willfully failed to pay Class Members overtime wages for all hours worked. Plaintiff is informed
28 and believes and based thereon alleges that Defendants’ willful failure to provide wages due and

owing them upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other Class Members who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

66. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of wages owing, including interest thereon, penalties, reasonable attorneys fees, and costs of suit.

FIFTH CAUSE OF ACTION

(FOR VIOLATION OF LABOR CODE § 226.7

REGARDING MEAL PERIOD WAGES)

(AGAINST ALL DEFENDANTS BY PLAINTIFF)

67. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 66 as though fully set for herein.

68. Defendants failed in their affirmative obligation to ensure that all of their employees, including Plaintiff, and other class members, had the opportunity to take and were provided with all proper meal periods in accordance with the mandates of the California Labor Code and the applicable IWC Wage Order. Plaintiff and class members were suffered and permitted to work through legally required meal breaks and were denied the opportunity to take their meal breaks. As such, Defendants are responsible for paying premium compensation for missed meal periods pursuant to Labor Code § 226.7 and the applicable IWC Wage Order. Defendants, as a matter of corporate policy and procedure, regularly failed to pay such premium compensation for each meal period Plaintiff and the class members missed.

69. Plaintiff and class members regularly worked in excess of five (5) hours per day and accordingly had a right to take a 30-minute meal period each day worked in excess of five (5) hours. Furthermore, Plaintiffs and class members who worked in excess of ten (10) hours per day had a right to take a second 30-minute meal period each day worked in excess of ten (10) hours.

1 **70.** As a pattern and practice, Defendants regularly required employees to work
 2 through their meal periods without proper compensation and denied Plaintiff and their employees
 3 the right to take proper meal periods as required by law.

4 **71.** This policy of requiring employees to work through their legally mandated meal
 5 periods and not allowing them to take proper meal periods is a violation of California law.

6 **72.** Plaintiffs are informed and believe and based thereon allege that Defendants
 7 willfully failed to pay employees who were not provided the opportunity to take meal breaks the
 8 premium compensation set out in Labor Code § 226.7 and the applicable IWC Wage Order and
 9 that Plaintiff and those employees similarly situated as them are owed wages for the meal period
 10 violations set forth above. Plaintiff is informed and believes and based thereon alleges
 11 Defendants' willful failure to provide Plaintiff and other class members the wages due and owing
 12 them upon separation from employment results in a continued payment of wages up to thirty (30)
 13 days from the time the wages were due. Therefore, Plaintiff and other members of the class who
 14 have separated from employment are entitled to compensation pursuant to Labor Code § 203.

15 **73.** Such a pattern, practice and uniform administration of corporate policy as
 16 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and class
 17 members identified herein, in a civil action, for the unpaid balance of the unpaid premium
 18 compensation pursuant to Labor Code § 226.7 and the applicable IWC Wage Order, including
 19 interest thereon, penalties, reasonable attorney's fees, and costs of suit.

20 **SIXTH CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 226 REGARDING RECORDKEEPING**

22 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

23 **74.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 73 as
 24 though fully set for herein.

25 **75.** Defendants failed in their affirmative obligation to keep and provide accurate pay
 26 records of Plaintiff and the Class, in violation of Labor Code § 226.

27 **76.** For example, as a matter of policy and practice, among the violations of Labor
 28 Code § 226, Defendants failed to keep and provide accurate records of Plaintiff's and the class

1 members' rates of pay, net wages earned, daily or weekly pay, deductions, and/or taxes being
2 withheld.

3 **77.** As a matter of uniform policy and practice, Defendants failed in their affirmative
4 obligation to keep and provide accurate records regarding the wages earned in pay periods of
5 their California employees.

6 **78.** Such a pattern, practice and uniform administration of corporate policy as
7 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the class
8 identified herein, in a civil action, for all damages and/or penalties pursuant to Labor Code §
9 226, including interest thereon, penalties, reasonable attorney's fees, and costs of suit according
10 to the mandate of California Labor Code § 226.

11 **79.** Defendants' wrongful and illegal conduct in failing to accurately record and
12 provide all information in accordance with Labor Code § 226 despite the clear legal obligation to
13 do so, unless and until enjoined and restrained by order of this court, will cause great and
14 irreparable injury to Plaintiff and all members of the class in that the Defendants will continue to
15 violate these California laws, represented by labor statutes, unless specifically ordered to comply
16 with same. This expectation of future violations will require current and future employees to
17 repeatedly and continuously seek legal redress in order to gain compensation to which they are
18 entitled under California law. Plaintiff has no other adequate remedy at law to insure future
19 compliance with the California labor laws and wage orders alleged to have been violated herein.

20 **SEVENTH CAUSE OF ACTION**

21 **FOR VIOLATIONS OF CALIFORNIA LABOR CODE § 2698 ET SEQ.**

22 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

23 **80.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 79 as
24 though fully set for herein.

25 **81.** On or about June 28, 2010, Plaintiff provided written notice to the California
26 Labor & Workforce Development Agency ("LWDA") of Defendant's violation of California
27 Labor Code §§ 201-204, 226, 226.7, 510, 1194, and 1197 pursuant to the California Labor Code
28 § 2699 *et seq.*, the Private Attorney General Act ("PAGA"). On August 12, 2010, the LWDA

provided written notice that the LWDA did not intend to investigate Plaintiff's said allegations and therefore allowed Plaintiff to proceed under PAGA against Defendant for said violations.

82. Pursuant to Labor Code § 2699(a), the members of all classes seek recovery of all applicable civil penalties for Defendants' violation of Labor Code §§ 201-204, 226, 226.7, 510, 1194, 1197, and PAGA.

EIGHTH CAUSE OF ACTION

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.

(AGAINST ALL DEFENDANTS BY PLAINTIFF)

83. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 82 as though fully set for herein.

84. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, inclusive, to wit, by (a) not paying Plaintiff and the Class all wages, including minimum and overtime wages, earned, (b) failing to provide proper meal breaks pursuant to California law, and (c) failing to keep proper records in violation of Labor Code § 226.

85. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

86. Plaintiff seeks, on his own behalf, on behalf of other members of the class similarly situated, and on behalf of the general public, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein.

87. Plaintiff seeks, on his own behalf, on behalf of other members of the class similarly situated, and on behalf of the general public, an injunction to prohibit Defendants from continuing to engage in the unfair business practices complained of herein.

88. The acts complained of herein occurred within the last four years preceding the filing of the complaint in this action.

89. Plaintiffs are informed and believe and based thereon allege that at all times

herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200 et seq., including those set forth herein above thereby depriving Plaintiff and other members of the general public the minimum working condition standards and conditions due to them under the California laws and Industrial Welfare Commission wage orders as specifically described therein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the class pray for judgment for themselves and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as the representative of the Classes and/or any subclasses;
3. For an order appointing Counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code § 1197, and for costs and attorney's fees, and for waiting time wages according to proof pursuant to California Labor Code § 203;
5. Upon the Second Cause of Action, for damages or penalties pursuant to statute as set forth in 29 U.S.C. § 206, and for costs and attorney's fees, and for waiting time wages according to proof pursuant to California Labor Code § 203;
6. Upon the Third Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code §§ 510 & 1194, and for costs and attorney's fees, and for waiting time wages according to proof pursuant to California Labor Code § 203;
7. Upon the Fourth Cause of Action, for damages or penalties pursuant to statute as set forth in 29 U.S.C. § 207, and for costs and attorney's fees, and for waiting time wages according to proof pursuant to California Labor Code § 203;
8. Upon the Fifth Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code § 226.7, and for costs and attorney's fees, and for waiting time wages according to proof pursuant to California Labor Code § 203;
9. Upon the Sixth Cause of Action, for damages or penalties pursuant to statute as set forth

in California Labor Code § 226, and for costs and attorney's fees;

10. Upon the Seventh Cause of Action, for consequential damages and penalties according to proof pursuant to California Labor Code §§ 201-204, 226, 226.7, 510, 1194, 1197, and PAGA;

11. Upon the Eighth Cause of Action, for restitution to Plaintiff and other similarly effected members of the general public of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 et seq., for an injunction to prohibit Defendants to engage in the unfair business practices complained of herein, for an injunction requiring Defendants to give notice to persons to whom restitution is owing of the means by which to file for restitution;

12. On all causes of action for attorneys fees and costs as provided by California Labor Code §§ 218.5, 226, 226.7, 510, 1194, 1197, 2699 and Code of Civil Procedure § 1021.5 and the Fair Labor Standards Act and for such other and further relief the Court may deem just and proper.

Dated: August 18, 2010

DIVERSITY LAW GROUP, P.C.

By: _____
Larry W. Lee, Esq.
Attorney for Plaintiff and the Class

DEMAND FOR JURY TRIAL

Plaintiffs, for themselves and the class, hereby demand a jury trial.

DATED: August 18, 2010

DIVERSITY LAW GROUP, P.C.

By: _____
Larry W. Lee
Attorney for Plaintiff and the Class